



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2010-0166]**

**Parts and Accessories Necessary for Safe Operation; Renewal of Exemption for Con-way Freight, TK Holdings, Inc., and Bendix**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of renewal of exemption; request for comments.

**SUMMARY:** The Federal Motor Carrier Safety Administration (FMCSA) renews an exemption which enables motor carriers to mount lane departure warning system sensors lower in the windshield of a commercial motor vehicle (CMV) than is currently permitted by the Agency's regulations. The Agency has concluded that granting this renewed exemption will maintain a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption. However, the Agency requests comments on this issue, especially from anyone who believes this standard will not be maintained.

**DATES:** This decision is effective November 18, 2013. Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) number FMCSA-by any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- Mail: Docket Management Facility, U.S. Department of Transportation, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001.

- Hand Delivery: Ground Floor, Room W12-140, DOT Building, 1200 New Jersey Avenue, SE. Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.
- Fax: 1-202-493-2251.

Instructions: Each submission must include the Agency name and docket number for this notice. For detailed instructions on submitting comments and additional information on the exemption process, see the “Public Participation” heading below.

Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the “Privacy Act” heading for further information.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or to Room W12-140, DOT Building, New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgement that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement for the FDMS published

in the Federal Register published on December 29, 2010 (73 FR 82132) or you may visit <http://edocket/access.gpo.gov/2008/pdf/E8-785.pdf>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Luke W. Loy, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations, MC-PSV, (202) 366- 0676, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001.

**SUPPLEMENTARY INFORMATION:**

**Background**

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption from the prohibition on obstructions to the driver's field of view requirements in 49 CFR 393.60(e) for a two-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level of safety that would be achieved absent such exemption" (49 CFR 381.305(a)).

**Applications for Exemptions**

On November 11, 2009, Con-way applied for an exemption from 49 CFR 393.60(e)(1) to allow it to install lane departure warning system sensors on 1,272 of its newly purchased power units. Takata and Iteris submitted nearly identical exemption applications for their lane departure warning system sensors on December 15, 2009 and on February 25, 2010, respectively. On June 14, 2010, FMCSA published a notice of these applications, and asked for public comment (75 FR 33666).

Section 393.60(e)(1) of the FMCSRs prohibits the obstruction of the driver's field of view by devices mounted at the top of the windshield. Antennas, transponders and similar devices (collectively, devices) must not be mounted more than 152 mm (6 inches)

below the upper edge of the windshield. These devices must be located outside the area swept by the windshield wipers and outside the driver's sight lines to the road and highway signs and signals.

Con-way, Takata, and Iteris stated that over the last several years, truck manufacturers have increased the windshield area to maximize driver visibility. As a result, manufacturers have installed larger windshield wipers that increase the swept area beyond the minimum required by Federal Motor Vehicle Safety Standard (FMVSS) No. 104, "Windshield wiping and washing systems." FMVSS No. 104 establishes minimum windshield wiper standards to be used by manufacturers of passenger cars, multi-purpose passenger vehicles, trucks, and buses.

Con-way, Takata, and Iteris provided diagrams and photos showing the dimensions of their lane departure sensors and their mounting locations on vehicle windshields. Specifically, the lane departure sensor device itself measures 2 inches by 3.5 inches and is mounted within the top 2 inches of the windshield wiper sweep. The lane departure system requires the forward lens of the sensor to be in the swept area of the windshield for a clear view during inclement weather.

Con-way, Takata, and Iteris cited the findings of a report published by FMCSA's Office of Analysis, Research and Technology titled "Benefit-Cost Analyses of Onboard Safety Systems," which summarizes the projected safety benefits for various CMV onboard safety technologies, including lane departure warning systems. Using projected efficacy rates ranging from 23 percent to 53 percent, the report estimated that, based on industry-wide use, lane departure warning systems have the potential to eliminate approximately 1,609 - 2,463 single-vehicle roadway departure crashes, 627 - 1,307

single-vehicle roadway departure rollovers, 1,111 - 2,223 same-direction lane departure sideswipes, 997 - 1,992 opposite-direction lane departure sideswipes, and 59 - 118 opposite-direction lane departure head-on collisions. Con-way, Takata, and Iteris each stated that without the exemption, they would be unable to (1) implement the lane departure warning system, and (2) realize the potential safety benefits that could be expected with the utilization of this technology, as estimated in the FMCSA report described above.

### **2011 Notice of Final Disposition**

On November 18, 2011 (76 FR 71619), FMCSA published a notice of final disposition granting the Con-way, Takata, and Iteris exemption applications. FMCSA determined that granting the temporary exemptions to allow the placement of lane departure warning system sensors lower in the windshield than is currently permitted by the Agency's regulations would provide a level of safety that is equivalent to, or greater than the level of safety achieved without the exemption because (1) based on the technical information available, there was no indication that the lane departure warning system sensors would obstruct drivers' views of the roadway, highway signs and surrounding traffic; (2) generally, trucks and buses have an elevated seating position that greatly improves the forward visual field of the driver, and any impairment of available sight lines would be minimal; and (3) the location within the top two inches of the area swept by the windshield wiper and out of the driver's normal sightline would be reasonable and enforceable at roadside. In addition, the Agency believed that the use of lane departure warning systems by fleets would be likely to improve the overall level of

safety to the motoring public.

### **Bendix's Request for the Renewal of the Exemption**

In 2011, Iteris, Inc. completed the sale of its vehicle sensors business to Bendix, which is continuing to sell the Iteris-developed lane departure warning systems. Bendix is seeking renewal of the 2011 exemption.

### **FMCSA Decision**

The Agency believes that granting the exemption renewal to continue allowing the placement of lane departure warning system sensors lower in the windshield than is currently permitted by the Agency's regulations will provide a level of safety that is equivalent to, or greater than the level of safety achieved without the exemption because (1) based on the technical information available, there is no indication that the lane departure warning system sensors would obstruct drivers' views of the roadway, highway signs and surrounding traffic; (2) generally, trucks and buses have an elevated seating position that greatly improves the forward visual field of the driver, and any impairment of available sight lines would be minimal; and (3) the location within the top two inches of the area swept by the windshield wiper and out of the driver's normal sightline will be reasonable and enforceable at roadside. The Agency is unaware of any incidents wherein a crash involving vehicles equipped with these lane departure warning systems could be attributed to the minimal visual intrusion of the devices into the drivers' field of vision. In addition, the Agency believes that the use of lane departure warning systems by fleets is likely to improve the overall level of safety to the motoring public.

While the November 2011 exemption granted relief to motor carriers using only the Takata and Iteris lane departure warning systems, the Agency has determined – given

it is unaware of any reduction in the level of safety associated with the use of those systems – that it is appropriate to extend the scope of this exemption at this time to encompass motor carriers using any lane departure warning system, provided that the sensor that is mounted in the vehicle windshield (1) is the same size (2 inches by 3.5 inches) or smaller than the Takata and Bendix sensors, and (2) mounted in the windshield in accordance with the provisions of the original exemption, and as restated below. If, however, a motor carrier wishes to utilize a lane departure warning system using sensors larger than those identified above, a new exemption application will need to be submitted to FMCSA in accordance with the requirements of 49 CFR 381.300.

#### **Terms and Conditions for the Exemption**

The Agency hereby grants the exemptions for a two-year period, beginning [INSERT DATE OF PUBLICATION in the FEDERAL REGISTER] and ending November 25, 2015. During the temporary exemption period, motor carriers using lane departure warning systems with sensors measuring 2 inches by 3.5 inches or smaller must ensure that the sensors are mounted not more than 50 mm (2 inches) below the upper edge of the area swept by the windshield wipers, and outside the driver's sight lines to the road and highway signs and signals. The exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) Motor carriers and/or commercial motor vehicles fail to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Interested parties possessing information that would demonstrate that CMVs

operated by motor carriers using lane departure warning systems are not achieving the requisite statutory level of safety should immediately notify FMCSA. The Agency will evaluate any such information and, if safety is being compromised or if the continuation of the exemption is not consistent with 49 U.S.C. 31136(e) and 31315(b), will take immediate steps to revoke the exemption.

### **Preemption**

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a person operating under the exemption.

Issued on: November 18, 2013.

William Bronrott, \_\_\_\_\_  
Deputy Administrator.

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